

# THE MARTHA'S VINEYARD COMMISSION

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## *Martha's Vineyard Commission Minutes for the Special Meeting of January 3, 2002*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, January 3, 2002, at 6:30 p.m. in the cafeteria of the Martha's Vineyard Regional High School, Edgartown-Vineyard Haven Road, Oak Bluffs, Mass. At 7:42 p.m., Richard J. Toole – a Commission member at large from Oak Bluffs, Chairman of the Land Use Planning Committee (LUPC) and the Hearing Officer that evening – opened the Special Meeting.

*[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Mr. Kelley arrived at 6:52 p.m. All of these members remained for the entirety of the Meeting.]*

### **Continued Public Hearing, Session Six: Down Island Golf Club Two (DRI #543).**

Mr. Toole read into the record the Notice of Continued Public Hearing for the Down Island Golf Club Two Development of Regional Impact (DRI #543). *[See the Full Commission Meeting File of January 3, 2002 (the meeting file) for a copy of said notice.]* He outlined what would be covered that evening: a response by the Applicant to issues and concerns raised earlier; 45 to 60 minutes of testimony from officials and members of the public; a question-and-answer with the Applicant; and an Applicant Summary.

### **The Applicant Responds to Issues and Concerns Raised in Previous Sessions.**

**Jim Ward**, an attorney at Nutter, McClennen & Fish of Boston representing the **Applicant**, noted that he had prepared a full memorandum regarding the subjects that he would only touch on during this session. *[See the meeting file for copies of the*

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*memorandum as well as for all other correspondence cited by the Applicant's representatives in this section.]*

Mr. Ward then read into the record a portion of a letter dated December 12, 2001 to the Commission from the Town of Oak Bluffs Finance and Advisory Committee:

"The Finance and Advisory Committee, having carefully reviewed the Down Island Golf proposal as to related [sic] the financial impact on the Town of Oak Bluffs, continues to maintain our favorable position as it relates to the proposal's economic benefit to the [T]own."

Mr. Ward also described a letter from Mullin Associates dated December 23, 2001, which contained a supplemental report to its fiscal impact analysis. Said report, he related, concluded that because of the addition of 350 school-age children that would come with a possible Chapter 40B housing development, the Town could expect a net fiscal impact of around \$1.7 million dollars. He cited an additional letter from Mullins Associates dated January 2, 2002 that stated that a recent study prepared on Martha's Vineyard's housing needs had confirmed the conclusions of the earlier Mullins analysis.

Dru Associates had submitted two letters, continued Mr. Ward, dated December 21, 2001 and January 2, 2002, addressing the concerns voiced by opponents to the project who had cited the Southern Woodlands' inclusion in the State's Biomap program. Ron Abrams would speak about this shortly, he said. Charles Passios had submitted a memorandum following up on the Silent Spring Institute's study of breast cancer rates on Cape Cod, Mr. Ward went on, and Mr. Passios had found out that the institute was only in Phase II of their study.

Mr. Ward cited as well the petition, so-called, submitted by the opponents, which was not in fact a petition, consisting as it did of 719 typed names and not signatures.

With respect to the environmental impairment policy, the Applicant maintained that he would not go forward with the project unless he could obtain a \$10 million policy, said Mr. Ward, who submitted for the record a copy of a letter dated January 3, 2002 from the Braley & Wellington Insurance Agency asserting that the company could provide \$10 million of herbicide and pesticide coverage, including coverage for nitrogen products. The letter listed five firms through which Braley & Wellington could obtain the coverage, Mr. Ward noted.

Also in the record was a memorandum dated January 3, 2002 to Commission Water Resources Planner William M. Wilcox from Environmental Science Services regarding the reuse of wastewater from the tertiary treatment system for irrigation purposes on the practice range, something that Charles Natale would expand upon later, related Mr. Ward.

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Mr. Ward then went through the highlights of his own memorandum dated January 3, 2002, which addressed point by point many of the arguments made by attorney Jeffrey Bernstein against the project in the December 20, 2001 session of the Hearing. He recognized, he said, that Mr. Bernstein was an advocate for his client's position and that naturally one had to trust one's attorneys. Mr. Ward suggested that the best resolution for the differences between them, which were matters of legal interpretation, was to trust one's consultants and the Commission Staff.

Mr. Ward continued that he wished to address specifically one of Mr. Bernstein's arguments – that the concept of nitrogen offset mitigation being proposed by the Applicant was basically flawed. Mr. Ward pointed out that his firm had another client, Willow Bend County Club on Cape Cod, who was proposing similar mitigation measures to accompany a course expansion and that the environmental consultant in that case was Horsley & Witten.

Mr. Ward referred to page 6 of his memorandum, which addressed Attorney Bernstein's assessment of the purpose of the Southern Woodlands DCPC, which Mr. Bernstein had described as being "to dedicate the Southern Woodlands to permanently protected open space." But to achieve that, Mr. Ward continued, would involve a taking. *[Mr. Kelley arrived at this point, 6:52 p.m.]* In his opinion, he said, the real purpose of the regulations was to avoid such a taking and to provide criteria that a project within the District must meet. Mr. Ward then quoted directly from the District regulations on their purpose.

Next, **Ron Abrams, a consulting ecologist working on the Down Island Golf Club project**, addressed some issues that, he stressed, had already been covered in the documentation he had submitted earlier, "but had recently been elevated to, shall we say, more highly emotional concerns through public comment."

Mr. Abrams began by quoting from the Biomap program literature itself: "Every plant, every animal and every undeveloped patch in Massachusetts contributes in some way, no matter how small, to the overall biodiversity of the Commonwealth." It would be wonderful, he observed, "a dream come true, if we could buy all the open space, preserve all the animals and all the plants and put an end to economic development and support our society some other way. And that is a dream."

His job, Mr. Abrams continued, was to deal with reality and to development wisely a piece of land, not whether it should be developed but how to plan it wisely, "which is what I thought the Commission's responsibility was."

The Biomap program itself, Mr. Abrams went on, showed two things: that two-thirds of all of the undeveloped land in the Commonwealth met their criteria for priority conservation; and that the element that had triggered the inclusion of the Southern Woodlands in the program – the moth habitat – had been addressed in the documentation and research already done for the Applicant.

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The significance of the site with regard to the ecology of the State, Mr. Abrams declared, might not be in the top half or top third, but perhaps in the top two-thirds of the areas identified on the Biomap. More important, he emphasized, was the kind of research being recommended for such areas, which was being done already by the Applicant's consultants.

Mr. Abrams stressed that the Down Island Golf Club site was already split from the core forest on the Island by a quarry, by a school campus and by the Edgartown-Vineyard Haven Road. "It is not as precious as it was represented," he said, characterizing the portrayals of the impact of the project by some opponents as "doomsday jargon."

The documentation he had submitted for the record, Mr. Abrams repeated, was factual. The changes in the wildlife assemblages in the area had been "explained, not dramatized," he observed. "And just as one commentator wrote – and this is not a commentator necessarily in favor of the project – 'The Commission has a chance to get its cake and eat it too. Plan the site cooperatively, ecologically wise development [sic], and everybody benefits.'"

**Testimony by Town Officials.**

**Oak Bluffs Selectman Todd Rebello** began with apologies to fellow Selectmen Roger Wey and Kenneth Rusczyk, with whom the proposal he would speak of had not been discussed in depth because they sat on the Commission. Over the past two weeks, he said, the concerns expressed by friends in his community had led him to approach Selectman Michael Dutton and discuss with him the possibility of somehow putting the 24-acre Town Parcel – located in the center of the site – into conservation, thereby creating more open space.

Another aspect of the plan was an affordable housing initiative that would be "a model for the whole Island and would have far-reaching benefits for young families trying to stay in Oak Bluffs," Mr. Rebello remarked, adding that the effort would not necessarily be to build affordable housing, but to subsidize down payments, for instance. He and Mr. Dutton, he said, had discussed this with Jack Law of the Resident Homesite Committee, whose reaction had been "very favorable."

Mr. Rebello explained that he was not looking for a new Application process but was hoping the Selectmen's ends could be achieved by means of a Modification. He related that he and Mr. Dutton had established "some common ground" with the Applicant, and he was hopeful, he said, that a solution could be found. He then turned the podium over to Mr. Dutton.

**Oak Bluffs Board of Selectmen Chairman Michael Dutton** prefaced his remarks by saying that although he continued to endorse the plan as presented, he and Mr. Rebello had listened to a number of people in the community as well as the Public Hearing

testimony and had then tried to develop some sort of plan that would assimilate those comments.

His board, Mr. Dutton continued, was very concerned about the possibility of a Chapter 40B development on the Applicant's property, and he re-emphasized that Oak Bluffs did not want a housing development. Both the Master Plan and the Open Space Plan had dictated a passive recreational use for the property and had specifically discouraged housing, he said; on the other hand, the Selectmen had a vested interest in providing better opportunities for affordable housing. "For us, a 40B project on this property is not the right way for us to solve our housing crisis, nor is it the right way for the Island to solve its housing crisis," he stated.

Another concern about the golf course project that had been addressed to some degree by the Applicant, Mr. Dutton went on, was the proximity of the western portion of the site to Lagoon Pond. Moreover, in asking the Resident Homesite Committee (RHC) to offer different approaches, it had become apparent that the 24-acre Town Parcel was not an appropriate site for youth lots, he said. Thus, the RHC had endorsed the idea of selling the parcel and using that money for funding for affordable housing financing projects like loans and subrogation.

The proposal they had come up with, explained Mr. Dutton, was that as a condition the Applicant should be required to make an offer to the Town to purchase the Resident Homesite property for a sum of not less than \$1.2 million and to offer as part of that transaction to deed at least 20 acres of property west of the Old Back Road to Oak Bluffs. He pointed to this area on a mounted site plan. On the current plan, he noted, this area contained the two holes that would be closest to the Lagoon.

In addition, proposed Mr. Dutton, the Applicant should be asked to extend the 20-year lease on the Webb's Campground to 90 years and to place over the 24-acre Town Parcel that the Applicant would be purchasing a Conservation Restriction similar to the one that would exist over the rest of the project.

Mr. Dutton then listed what the Town would receive from this arrangement, should it come to fruition: \$1.2 million for the Town Parcel, to be used only for affordable housing initiatives; 20 acres outright of the most sensitive area of the project that would be preserved as untouched space; 90 years instead of 20 years for the Webb's Campground lease; and unfettered access to the Old Back Road to Oak Bluffs.

"Most importantly," Mr. Dutton noted, "the proposal gives Oak Bluffs residents the opportunity to decide for themselves on the conservation of land close to the Lagoon and a huge amount of money for the Resident Homesite Committee to appropriate." He added that the sale of Town-owned property required a two-thirds vote at Town Meeting after a Request For Proposals (RFP) process.

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Mr. Dutton then outlined the concerns that would be addressed by the proposal: the protection of the Lagoon; more land under Conservation Restriction; Town ownership and possible public use of land in the western area of the site; money for affordable housing initiatives for the Town; and the better use of existing trails. "But the proposal only works for the Town," he emphasized, "if the Commission approves this project and provides the minor Modification of the re-siting of those holes that are [inaudible] closest to the Lagoon."

Another concern foremost in the minds of the community members with whom he had spoken, said Mr. Dutton, was water quality. At the last session, he reminded the Commission, he had spoken of possible opportunities for spray irrigation using treated effluent coming from the Town's sewage treatment plant. *[See page 10 of the Full Commission Meeting Minutes of December 20, 2001.]*

Hoping to clear up some misconceptions, Mr. Dutton explained that Oak Bluffs was at the end of what had been their largest municipal project. The plant would go on line in April, and by June 1 they expected to have a little more than 560 customers making use of that plant. "That's not a lot of users," he remarked.

Mr. Dutton related that the Town suffered one great constraint: "We don't have adequate leaching capacity in Ocean Park to fully utilize the plant. We're restricted by DEP to 3 percent growth over a 20-year period. That's not compounded. That's 3 percent of our current projected use over the next 20 years. So essentially that means that if somebody comes in tomorrow and proposes to take up that entire growth, in theory they could be allocated that growth and that would be the end of the opportunity for us to expand."

What this also meant, continued Mr. Dutton, was that at the end of the 20-year period, the Town was going to need additional leaching capacity. One of the reasons Ocean Park had been selected for the leaching field, he said, was that the Town did not have appropriate land for that use. Last month he had testified that he did not think that the DEP had yet approved the use of reclaimed water for spray irrigation on golf courses. "And, in fact, I was wrong," Mr. Dutton noted. DEP had issued guidelines on reclaimed water for spray irrigation, he reported, and had recognized and approved reuse of water for spray irrigation on a golf course in Yarmouth and was looking at approving the same at the course in Kingston.

"As a further condition to this project," stated Mr. Dutton, "I would ask the Commission to require the Applicant to install piping from the course to the Oak Bluffs treatment plant in order that the course accept treated water for spray irrigation as it's approved by DEP." This would allow the Town to expand the surface area of the new sewer system to areas deemed to be environmentally sensitive, he explained. In addition, said Mr. Dutton, the Town could improve the quality of the discharge and at the same time add users to the system, thereby lowering the user fees.

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"The bottom line is," Mr. Dutton concluded, "Oak Bluffs cleans up discharge, adds more people to the system, creates opportunity for discharging treated water and the course needs far less groundwater to sustain healthy turf." He added that he would be happy to work with the Land Use Planning Committee on formulating reasonable conditions based upon the proposal he had presented that evening.

Linda Sibley, a Commission member at large from West Tisbury, asked Mr. Dutton how he had come up with the figure of \$1.2 million for the Town Parcel. "We looked at roughly what we could best figure to be the market value for that piece of property," Mr. Dutton replied, adding that, being no expert, he considered this a flexible figure. Thus, he was proposing that the condition read "no less than \$1.2 million."

Megan Ottens-Sargent, the Aquinnah Selectmen's Appointee, requested that Mr. Dutton elaborate on the 20-acre parcel swap. In other words, would the two holes be relocated to the 24-acre Town Parcel? she inquired.

Mr. Dutton explained: "My suggestion, in conjunction with Todd [Rebello], would be to take this area right here, which obviously is going to have the greatest impact on the Lagoon, then take these holes, re-site them to the property which the Applicant will be purchasing, and in exchange get a sum of money, nothing less than \$1.2 million." As he said this, Mr. Dutton pointed first to the western end of the site and then to the Town Parcel. Pointing back to the western end of the property, he remarked that "20 acres a layman like me would identify as being a reasonable acreage for the Town protection of this area."

Ms. Ottens-Sargent wished to confirm with Mr. Dutton that the two holes currently planned for the western end of the site would be moved to the 24-acre Town Parcel. Yes, answered Mr. Dutton, they would go on "a portion of the 24 acres which the Applicant would be purchasing, but would be subject to similar Conservation Restrictions, essentially, that encompass the rest of the project."

Tisbury Selectmen's Appointee Tristan Israel verified that the land swap would be contingent on a Town Meeting vote. "I can do a lot of things," said Mr. Dutton, "but I can't sell Town property. The Town Meeting is the only entity that can sell this real estate, and it can only do it by a two-thirds vote."

Mr. Dutton also outlined how the Selectmen would have to develop an RFP in conjunction with the Resident Homesite Committee, which held the title to the parcel, in order to sell it or to put it out for a proposal to receive something back. "What we're asking," he stressed, "is that the Applicant be required to make an offer or make that proposal back to us in response to a properly issued RFP."

Mr. Israel wanted to make sure that Mr. Dutton was asking the Commission to approve the project as proposed and then to wait for a Town Meeting vote. Mr. Dutton replied, "The Commission would have to approve the project and condition it that the Applicant

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[make an] offer in response to a properly drafted RFP by the Town of Oak Bluffs for its Homesite Committee."

Mr. Dutton continued, "The Commission would have to approve whatever they want, but my request would be that the Commission approve the project with the condition the Applicant sign a written offer to purchase and with all the things that I mentioned before, and then once that offer came in and if it was the best offer that we could solicit, then the Town would have to ultimately decide on the disposition of that property."

Mr. Dutton added, "The proposal would only work in response to an RFP generated by the Resident Homesite Committee." At this point, the Hearing Officer apologized for the banging coming from the heating system in the cafeteria.

**Questions and Comments by the Commissioners Regarding Mr. Dutton's Proposal.**

Christina Brown, a Commission member at large from Edgartown, requested more clarification: "Your suggestion is that there be 20 acres on the western side, sort of north of where the campground parcel would be that would be Town land?" "Correct," responded Mr. Dutton.

Ms. Brown continued, "Can you talk a little bit about your understanding or hopes for the Town's use of the 99-year lease option, sort of how you see using all that property?" Mr. Dutton answered that a number of people in Town had made it known that they wanted to preserve the Webb's Campground, "and I certainly don't disagree with that. Webb's Campground currently exists right in this area. I certainly foresee the Town [requiring] that any Conservation Restriction placed on this property would include the possibility that the Town could again issue an RFP for somebody to come in and use this, run this as a campground."

Mr. Dutton added that what he was requesting was that the Commission condition approval based upon Oak Bluffs being able to obtain title to a portion of this property, along with the other proposed conditions. "My question really was, have you talked about it and do you want to run a campground?" wondered Ms. Brown. Mr. Dutton replied that he thought it safe to say that his Town did not want to be in the business of running a campground. Speaking for himself, he went on, Oak Bluffs would be well-advised to ask the Town to go out and solicit proposals for running a campground on that piece of property.

Andrew Woodruff, a Commission member at large from West Tisbury, wanted to know if the Applicant had acted on the suggestion of Trails and Byways Planner William Veno to reconfigure Holes 12 and 14. [See page 7 of the Full Commission Meeting Minutes of November 15, 2001.] Mr. Dutton responded that he did not specifically know what that discussion had been about. What he did know, he said, was that the reconfiguration of Holes 12, 13 and 14 was part of the Selectmen's objective so as to get those holes away from the Lagoon.



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Ms. Sibley expressed the opinion that a discussion of details like the positioning of the holes and the running of the campground brought up "a really thorny procedural issue as to whether or not the Commission can write the kind of conditions that you are asking for."

Ms. Sibley explained: "The Commission has tried for years to avoid exactly this kind of situation where there were second- or third-party conditions. I'm also concerned about whether the process that you're describing would actually meet the State regulations for, I believe it's 30B or 30 something or other, the public bidding regulations. What would happen if someone else bid more than the Applicant? And could the Town refuse to sell it at that point? I mean, I'm not sure you could."

Ms. Sibley continued: "Where I'm going with this is, my immediate reaction is, if you're serious about this and if the Applicant is serious about this, that the process might be, that this process, this procedure goes on hold and that you move forward with the Town process rather than asking the Commission to write conditions that maybe we really just can't write and cause a huge procedural mess."

"Linda, that's a point well taken," answered Mr. Dutton. However, he noted, he was fairly certain that the suggested process would meet the requirements of the Uniform Procurement Act. Ms. Sibley responded that she thought it would be "really, really radical and risky for the Commission, I think, whereas stopping this procedure and making that happen and then coming back with a clean plan [sic]. When we start complex conditions, especially when they involve third parties, we just ... well, I've said that."

Mr. Israel prefaced his remarks by observing that everyone involved wanted to be done with the Public Hearing. He thought, though, that there would be science involved if the Applicant were to move greens. "It changes the impact from one pond to another pond," he said. "Maybe it's not a whole lot, I don't know. But I, you know, to make a condition on something where I don't know, I haven't heard testimony from the Applicant or from anybody else as to, you know, how that changes the dynamics." He concluded that it would be "cleaner" to make the changes to the plan through the Applicant.

"That's a point well taken," remarked Mr. Dutton. He and Mr. Rebello, he said, had had a "fairly detailed discussion" with the Applicant, who had indicated that he would be willing to discuss and work on conditions like the ones he had outlined. He reiterated the reasons behind the suggested changes.

Michael Donaroma, the Edgartown Selectmen's Appointee, observed that it looked as if the Town was hoping to get \$1.2 million, 20 acres of land and a reconfiguration of the golf course to create more open space. Thus, he believed that such a "carrot" should be considered seriously by the Commission.

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"Now the only problem here," Mr. Donaroma continued, "is that the Town could turn it down. But still, I don't think the Applicant's going to walk away and say, 'Okay.' Why doesn't everybody go look at this? Maybe you should ask him. Maybe he's willing to say, 'Okay, I'm going to walk away. You guys will all think about this, and tell me if the Town, go to the Town and see if it works.' I think what he's trying to say is, if we can approve this project with the condition that he has to offer that to the Town and do it if the Town approves it, I think we need to give this some serious thought."

Mr. Donaroma pointed out that although it was possible that the Hearing could be continued a year from then, "I think we'd lose the Applicant. Maybe not. Maybe you can work with us another year." He then enumerated some of the benefits of the proposed changes to the plan, which had already been stated by Mr. Dutton.

Mr. Rebello emphasized that although this was clearly an initiative that he and Mr. Dutton had presented to the Applicant, they continued to feel that science and the plan presented to this point should be acceptable. "What we're doing," he said, "is we're attempting to raise that bar and add a twist, a twist that we feel fairly secure can happen." This would be a win-win situation for everybody involved, he added, and the Applicant had stated that the changes to the plan had merit and were possibly achievable.

Mr. Toole expressed the opinion that the Commission should not be debating the merits of the proposed changes. Mr. Israel argued that he was not trying to debate the merits but to look at the procedure in this case. Mr. Toole asked Commission Executive Director Charles Clifford for his thoughts.

"I think it would be a very difficult condition to write," remarked Mr. Clifford. "I think in this situation I believe it has to be between the Applicant and the Town. You're asking the Commission to condition a Town Meeting vote, basically. You can recommend that they talk to the other, which is the safer procedure, I believe, and if they make a change, you can, I believe, look at it as a minor adjustment to a plan. You're really not approving a routing plan. You're approving a concept of a golf course."

Mr. Rebello responded, "What we're asking for is a condition that the Applicant make the offer.... That allows us to proceed to the next step." He added that obviously the course could stay as it had been proposed in the Application. The Selectmen had thought, though, that it just made sense to reconfigure the holes, he concluded.

"Do we want to hear from the Applicant at this point?" asked Mr. Toole. **Robert Mone, an agent for the Applicant**, came forward and stated: "We were spoken to by Mike [Dutton] and Todd [Rebello] regarding this matter and [were] asked if we would consider cooperating in this process, if it was feasible down the road ... and the idea was possibly a two-tiered approval where this plan was approved as presented and upon great consideration, if the details could be worked out, to utilize this property in the middle to the benefit of the Town and all the rest, that we would be glad to cooperate in that effort...."

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Mr. Mone continued, "But at this point we want to make it very clear that we're confining this project to ... what we presented and we only include the land that we own and that's really all we can discuss. We would be glad to cooperate in the future with any way to make it better, obviously, but that's really what we expressed to them. There was [sic] no agreements or anything else. It was just totally conception at this point."

**Testimony from Members of the Public.**

The Hearing Officer moved on to testimony from the public, noting that he wanted to hear first from those who had not spoken yet.

**Fred Mascolo** related how he had been watching the approval process from the start. "I care very much about this place," he remarked. "This is a great Island. I really like living here." Although he was in favor of the project and many others were against it, he said that he owed the opponents thanks, since their efforts had helped make the development "a tremendous thing that helps everybody here if this goes through" – taxes to the Town, open trails, a campground, \$1 million for the skating arena and the Island memberships. "These are all things," he observed, "that never would a golf course give to any public anywhere else."

Mr. Mascolo spoke of how the Applicant and his team had "evolved" along with the plan. "You know, this isn't the 'Rocky' speech in Russia, but a lot of great things have come out of this, and I think it's amazing that we're at this point with all these things," he declared. He pointed to an important factor in his support for the project: the ability of each Island member to have three guests. "So that means 600 Island people get to play," he said.

Mr. Mascolo noted as well that the fact that the Island belonged to the year-round residents except for July and August, combined with the fact that Vineyard winters were warm, would make it possible for Islanders to play all year long. He also mentioned the Applicant's offer to allow the high school golf team to play at the club. "I'm very much in favor of it," he concluded, "and I think it would be a great addition to the Island, and I think the fact that they hung in there for two years and adapted to our ways here shows that they do want to be part of our community. I think we should welcome them."

**Deborah Pigeon of Oak Bluffs** stated that she and her family would like "to see the land stay conserved in an open way." She described how since her move to the Island 16 years before, a lot of efforts had been made to change things on the Vineyard. "And we'd like to see less interest in manipulating the land that we live on but maybe trying to fit in a little more with it," she said, adding that she thought the golf course was "a manipulation of some natural land."

"I really hope that land stays open, because once it's closed, it's closed, and we're already so much at that point here as it is," Ms. Pidgeon concluded. "I just think it's something we need to think about everywhere, not just here."

**Ron Gamba of Oak Bluffs** stated that he had lived across the street for about 20 years and that he wanted to thank the Selectmen who had supported the project. "And I want to thank the Applicants because I think it's the best use and the nicest thing to do with the property," he said.

**Kerry Scott of Oak Bluffs** read a letter into the record for Michèle Ratté, who had laryngitis. *[See the meeting file for a copy.]* The letter referred to the Applicant's threat to use Massachusetts General Laws, Chapter 40B if his proposal were denied. There was another law, Ms. Scott continued, that provided the lawful remedy of eminent domain takings for public purposes, including land protection.

Ms. Kerry then read the names of the citizens who had signed the letter: Joan Wuerth, Michèle Ratté, Jane Rose, Ann Margetson, John Wuerth, Janice Dorchester, Douglas Dorchester, Varnum Mead and Janice Mead.

Next to testify was **Carl van Rooyen, who described himself as a year-round resident on the Island for about 20 years.** His three children, he said, had been born in Oak Bluffs, and he owned a small piece of property on Lagoon Pond. Mr. van Rooyen explained that he wished to address two issues, the first being the so-called petition from Rick Bausman and his group. *[See page 21 of the Full Commission Meeting Minutes of December 20, 2001.]*

The conservation alternative would supposedly preserve the Island's ponds and provide public access forever, Mr. van Rooyen continued. "Given the fact that over 700 citizens signed this document, I think it's worth your closest scrutiny," he said. For one thing, he declared, there was no conservation alternative, and the Applicant had stated for the written record that he was no longer considering selling the land for conservation. "When you weigh this petition and similar testimony, I suggest that you ask how the conservation alternative would be offered," he stated.

Mr. van Rooyen reminded the Commission members about what had happened after the Denial of the Meeting House Golf Club proposal on Edgartown Great Pond (DRI #471). "Basically, the same opponents and the same petition came before you and spoke of the same conservation alternative," he noted. "With all due respect," he said, "I hope the Commission remembers that [in the case of] Meeting House, contrary to the intent of both proponents and opponents, public access to the property has been permanently denied.... If successful land conservation means we can't set foot on it, I'm opposed to it."

Not only was the Meeting House property closed to the public forever, Mr. van Rooyen went on, but nothing was being done about the nitrogen plume that continued to threaten

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the pond and the groundwater. Millions of dollars had been put on the table for a study and action on existing water problems, public access and true conservation, he said, and this had been swept away with what was on the site now – trophy homes and zero access.

Mr. van Rooyen also touched on the issue of public statements made by a few Commissioners to the effect that the testimony would all be weighed equally. "In my opinion, [when] the Selectmen of Oak Bluffs and their eminently qualified Water Superintendent testified," he declared, "I fully expect their testimony to be given much more consideration than mine or any other ordinary citizen's who may favor or oppose this plan."

Mr. van Rooyen continued, "Moreover, when the Commission's own Staff experts speak, I expect them to be the voice of the taxpayers and considered more highly than outside experts. That four out of five Oak Bluffs Selectmen passionately endorse this plan should be understood by you to represent their Town's best interests. It seems crystal-clear to me where Oak Bluffs stands on this Application."

**Sally Apy of Edgartown** remarked that she was happy to follow Mr. von Rooyen because she lived on Meeting House Way and was really interested in those trophy houses that were not there. She hoped, she said, that the Commission would consider the proposal before them and not feel threatened by other possibilities.

Ms. Apy stated that she was grateful to Applicant Corey Kupersmith for clearing up the title issues related to the property, and she believed that he was interested in what was best for the Island. "And all you need to consider right now is whether or not a golf course is the best use of that property," she said, "and don't be frightened by houses because, as you know, the process on Martha's Vineyard can raise a lot of questions and a lot of hoops to jump through before millions of houses can be built...."

"Personally, I don't think a golf course is really necessary," Ms. Apy concluded. "So I say 'No, thank you,' and I support you in your positions."

**Bob Priestley of Water View Farms in Oak Bluffs** spoke on behalf of the Martha's Vineyard Arena, beginning with some words about his background in athletics and his work on the arena's board. He went into some detail about the history of the facility, the programs it offered, its benefits to the Island, the costs for running the facility, and its current needs. Mr. Toole prompted Mr. Priestley to get to his point.

Mr. Priestly then described how last spring the Down Island Golf group had given the facility \$10,000 to help meet electricity costs. Moreover, he noted, the arena board had a signed contract with the Applicant that would pay \$140,000 once the permit for the course had been granted. In addition, the Applicant had promised them a sewer connection so they would be able to build new locker rooms. And finally, the Applicant had promised the board \$50,000 per year for a 20-year period. This would help them pay their yearly deficit and to build new locker rooms, he explained.

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"Speaking for several hundred present hockey players and future hockey players on Martha's Vineyard, that's a great deal," he declared, "and all we wish is smooth sailing to this golf group and hope that course goes through."

**Michael Kemly of Oak Bluffs**, a four-year resident on the Island, began by saying that he wanted to talk about basic human instincts. "When you feel threatened, your instinct is to try to make the threat go away," he observed. "From the beginning I have watched this, from when they first rolled in, dug wells without permits to make sure there was water so they could start with this plan, I smelled a rat. Then I saw pressure, the innuendos, the threats, subdivision amongst the members of the board here. I saw more threats. And as people, when we feel threatened, we react a certain way. I think that this course and the people behind this project that's proposed here are dangerous people, and I'm sure many of you have felt ..."

Governor's Appointee Joseph P. Kelley interrupted and said, "You ought to shut him off right there." Following an exchange between Mr. Kelley and Hearing Office Toole, Mr. Kemly wrapped up his testimony, appealing to the Commission to "take a gut check and make the right decision and weather the storm, because it means a lot. Essentially the biggest point I've ever made is there's a lot of water underneath that we have to be concerned with, that we have to drink and bathe in." He also mentioned the threat of a drought that had been the subject of a recent newspaper article.

**Peter Simon of Chilmark** stated that although he loved golf, he wanted to equalize the playing field between the haves and the have-nots and to address the needs of some Island institutions that had been struggling, like the Martha's Vineyard Arena and the hospital. Contributions to these organizations mandated by the Commission, he continued, would ameliorate some of the divisions that existed. "I'm not saying that it's a perfect way to solve some of our social issues," he said, "but I think it's a good way."

Mr. Simon also remarked that currently not many people used the land in question. As an aside, he applauded the Commission members for their dedication. "Having said that," he went on, "I feel that we have a chance here to open up the land for everyone, not only golfers like myself, but people on bikes, people on horses, people who just want to walk."

Mr. Simon added that he could not understand why this project could not get approved, especially if all the ecological concerns were very clearly monitored and mandated. If the promises made by the Applicant turned out to be false, he suggested, the operation could be shut down.

**Dick Johnson** stated that he was speaking that evening not in his capacity as the Executive Director of the Sheriff's Meadow Foundation but as an individual member of the community in a nonprofessional capacity. Although he was a fairly recent wash-ashore, having lived on the Island for only 12 years, Mr. Johnson said that he had nevertheless become deeply attached to it over that time.

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Mr. Johnson remarked that he was fortunate in that he received housing as part of his job. His daughters, however, would not likely be able to live on the Vineyard when they grew up. "Ironically, I'll probably have to leave when I retire," he noted.

What he was trying to say, Mr. Johnson continued, was that the issue of affordable housing was important to him both philosophically and personally. "Thus, I find it particularly distressing," he said, "to see the 40B legislation ... being used as a club in an attempt to get an Approval for an unrelated golf proposal."

Therefore, Mr. Johnson concluded, he urged the Commission members to evaluate the project on its merits and its impact on the unique natural, historical, ecological, scientific, cultural and other special values of the Vineyard. He recognized the difficulty of the decision they faced, he said, and he reminded the Commissioners that there were available choices other than the two being offered by the developer. He thanked them for the chance to speak and the time and energy that they dedicated to the Commission.

**Elaine Weintraub and Carrie Tankard** explained that they were there to represent the African-American Heritage Trail. Ms. Weintraub related that as historians and community activists, they were not there to discuss the relative merits of the golf course plan. "What we would like to say," she continued, "is that we have been impressed with the aspect of the plan that mentions and pays great attention to diversity." This was not common, she observed, and she saw it as an attempt to include all of the Island community. "And the African-American Heritage Trail appreciates that," she concluded.

**Richard Williams** testified that he had been born in Oak Bluffs, that his father and grandfather were from Oak Bluffs as were his children and grandchildren. He hoped, he said, that the Commission would see the whole picture and the irreversible environmental changes that would occur if the project were approved. Having done surveying on the Island, he noted, there was no other place on the Vineyard where five Ancient Ways crisscrossed, adding that those trails would never be the same again, once they had lawn on either side.

Mr. Williams went on that he had heard two of the Town's newer Selectmen say that the Town's people wanted the golf course. He then pointed to the Town's Master Plan and its recommendation that Webb's Campground be preserved as a whole and not cut from 140 or 150 sites down to 30. Although the Master Plan also recommended that the Town study the feasibility of a golf course on the site, he said, "the Town's people have voted it down twice."

Mr. Williams also spoke of the DCPC regulations that had been developed to protect the Southern Woodlands. In addition, he suggested that the Commission members take a walk down to the Martha's Vineyard Golf Partners project in Edgartown to look at "the devastation down there from that golf course."

**Michèle Lazerow of Oak Bluffs** described herself as a former Commissioner who had gone around and around considering the project before them. "But in the end ... it's not just deciding what is the best possible use of the land," she said. Instead, she suggested, they had to consider the best possible choice for "what's available and likely."

Commission Staff felt comfortable that the golf course would not be a danger to the Town's water, Ms. Lazerow continued. "I feel comfortable with that," she remarked, adding that the preservation of as much open space as possible and public access to the trails would be a better solution for that piece of property than either an exclusive housing development or a Chapter 40B housing development. "And I think it's important to weigh these things," she said. "In the end, as I say in my letter, I trust that you will give the proposal before you very careful consideration and come up with the best possible solution for the citizens of Oak Bluffs and the Island."

**Ann Margetson of Oak Bluffs** related how she had heard from a number of friends about the Martha's Vineyard Golf Partners course under development in Edgartown, and one of them had wondered if anyone had taken photographs of the groundbreaking. "And she said it was one of the worst moments of her life," said Ms. Margetson, "to see these trees, hundreds and hundreds of trees upended with their roots sticking up in the air."

John Leite had told her, Ms. Margetson continued, that many of the trees that had been taken down had been chipped behind his property in Oak Bluffs and that his children had cried to see all these trees destroyed.

"No matter what happens," declared Ms. Margetson, "there's no way to speak of the golf course as a preservation of land. It is not a preservation of land. It is a total change of land use - total - because 400 acres has not been mentioned in here, but I think it's worth mentioning again, that 400 acres of unbroken woodland is at stake." Moreover, a campground of 82 acres was being exchanged for one of 16 acres, she noted. "Paying us off for the loss of something irreplaceable is not an exchange in these times," she declared.

Ms. Margetson spoke as well of acid rain and how the trees attempted to clean this. In the hundred years the woodland had been there, she explained, the Island had come to need those trees more than ever before. She then thanked the Commission for the time they had spent listening to testimony that she considered important.

The Hearing Officer thanked everyone who had taken the time to come and testify.

#### **The Commissioners Question the Applicant's Team.**

Mr. Israel asked Mr. Ward to **elaborate on the golf course project on Cape Cod where Horsley & Witten was consulting on the mitigation plan.** [See page 3 of these Minutes.] Mr. Ward explained that Pat Butler of the Nutter, McClennen & Fish office in



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Hyannis was working for the Willow Bend County Club, which was going through a nine-hole expansion being reviewed by the Cape Cod Commission and the Mashpee Planning Board. He related that a nitrogen mitigation plan had been proposed that in this case would be carried out by hooking up the septic systems for an adjacent condominium complex into the wastewater treatment plant of the golf course.

Mr. Israel wanted to know if in the Willow Bend situation there was a pond nearby. "I know there's a significant nitrogen issue there," replied Mr. Ward. Mr. Mone, who was familiar with the project, provided more details, describing how the course was near cranberry bogs and fairly close to the coast between New Seabury and Osterville.

Ms. Sibley expressed some continuing concerns she had with the **club membership structure**. In the first two golf course projects before them, in 1999, both Applicants had stated explicitly that members would have to have pre-existing Island ties, she recounted. In the case of the Down Island Application, however, the Applicant's team had used terms like "the majority" or "the vast majority" in describing how the members would have connections to the Vineyard. "But there has not been a specific declaration that all members must have existing connections to Martha's Vineyard," she said.

On Nantucket, Ms. Sibley continued, there were golf course members who did not even rent on that Island but merely flew in, played golf and left. "And I think there is a significant concern in this community about jet noise," she stressed, something she was aware of as a former member of the Martha's Vineyard Airport Commission. She also wanted to know if it was still true that there would not be corporate members in the Down Island Golf Club. Mr. Ward responded that it was true that there would not be corporate memberships.

Mr. Sibley related how she has asked at an earlier point if there would be any categories of membership other than equity memberships and Island memberships. She had been told that there would be only those two, she went on, but then she had asked Staff to obtain a Membership Agreement. There had been one, but it had now expired? she inquired. Right, answered Mr. Ward. So there was currently no Membership Agreement? Ms. Sibley asked. None, responded Mr. Ward.

Ms. Sibley pointed out that when a subdivision was being reviewed, the Commission required that the Applicant submit the Homeowners' Covenants as part of the Application. "Is it possible that you could submit to us a Membership Agreement?" she requested. Mr. Ward replied, "I think we can submit something that commits to the types of memberships, but in a way that ..."

Ms. Sibley interrupted and asked if it would include the responsibilities of the members. "Yeah," answered Mr. Ward, "you see, the way that, the original golf course was proposed a security, an Offering Statement, and the Offering Statement has, if you've read an Offering Statement, it's got disclosures of banks and there are described the categories of membership and everything else, and there were bylaws in that club. But

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with that, to create the Offer, you know, is a significant amount of work and cost, so that I think that the plan here is a little hesitant.... I think that we can put something together, though."

Ms. Sibley recalled that in the earlier disclosure she had read there were going to be both honorary and complimentary memberships. "And to me this is actually very important," she remarked. "This goes to the question of who is going to benefit from playing on this golf course, whether all of these people are in fact part of our community." Thus, she concluded, she would be much more comfortable if she had in hand some kind of written declaration so that the Commission could accept that as an Applicant's offer. "Fair enough," responded Mr. Ward.

Mr. Mone offered some clarification on the membership plan. In the process of becoming a member, he explained, a thorough review would be done of the applicant's Island ties. "And we will be able to submit in writing a sample application form for membership," he added.

Oak Bluffs Selectmen's Appointee Kenneth N. Rusczyk referred to Mr. Ward's mention of a **\$1.7 million impact from 350 children coming out of a possible Chapter 40B development being added to the school system.** [See page 2 of these Minutes.] Mr. Rusczyk requested that the Applicant submit this information in detail, including an explanation of how it was computed. DRI Coordinator Jennifer Rand told him if this had already been submitted and was included in the Commissioners' packets that evening.

James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – referred to the fact that following the Denial of the first Down Island Golf Club Application, some lawsuits had been filed by the Applicant. "And what's the **status of those lawsuits?** Are they currently on hold?" he inquired. Mr. Ward explained that because of the court's Order of Remand, the lawsuits were "basically on hold, so nothing can go on."

"So what happens to those lawsuits on Approval, if this gets approved or denied?" asked Mr. Vercruysse. "Dismissed," replied Mr. Ward. "But if they deny, if denied, the way the Order reads is that we would appeal the Decision and I think they are both consolidated." Mr. Vercruysse queried further, "If it's approved with conditions, those lawsuits ..." "Go away," said Mr. Ward, finishing the Chairman's sentence.

Mr. Israel wanted to know if anything would preclude the Applicant from proceeding with his Chapter 40B Application if the golf course were approved. "I not aware of that. There's nothing that I know of, no," responded Mr. Ward, "other than what would be the will of the Applicant."

Ms. Brown wondered **at what point the Applicant proposed to file the Conservation Restriction.** Mr. Ward replied: "It would, it would be once they, the final approval from the Planning Board and the actual locations of the holes are laid out and, you know, the

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buildings and everything else, the driveways and everything, because basically the way Joel Lerner wants you to do it is you would have to exclude by a metes and bounds description all the areas where there's paving and stuff like that, because they don't want it in the Restriction, and since we don't know exactly where everything's going to be, it doesn't make any sense to actually to create [coughing and Commissioner talk make the next four or six words inaudible] ...." [Joel Lerner is the Director of Conservation Services for the Executive Office of Environmental Affairs.]

Mr. Ward continued: "He [Mr. Lerner] actually cautions you to be very careful about that." The attorney then referred to some mistakes he himself had made along this line in the past and added, "It would be after the Planning Board's approval and we know where everything's going to be." "But before what?" asked Ms. Brown. "Before construction, I mean, is that what you..." said Mr. Ward, his voice trailing off. "Yes, I was hoping you would have an idea yourself about at what point, given it was an approved CR and [you] had worked out the details, and I understand you're willing to consider a co-holder, perhaps the Town..." "Yes," said Mr. Ward. "...so details would have to be worked out with the Town," finished Ms. Brown.

Ms. Brown questioned Mr. Ward once more: "Well, I've asked my question. When would you file it, in the process that it was all worked out?" "I never really thought about it," replied Mr. Ward. "Okay, fine," said Ms. Brown. Mr. Ward answered further: "My guess is that once we know where everything is going to be, we'll do the metes and bounds, and there's no reason why we couldn't do it right after that."

Ms. Brown turned to the subject of the **campground lease**. In said lease, Ms. Brown pointed out, reference was made to the Town's abiding by a CR on the campground land. "But I see that you don't include that," she noted. "Have you thought about including the campground land in a CR?" "We did, yes," replied Mr. Ward. "Since there's reference in the lease to it," explained Ms. Brown.

Mr. Ward answered that admittedly the documents were going to have to be "blended" once details had been worked out. He added that they had originally thought about doing that. "I mean, that would be our preference," he said, "but currently Vineyard Open Land [Foundation] didn't really want the responsibility of having the campground as part of their responsibility of being the holder of the CR."

Mr. Ward continued: "So what we, what the lease actually provides is almost a Lease Covenant CR, because it prevents - it's not a great way to explain it, but - the terms of the lease actually prevent anyone from cutting trees. So I'm confident that both with the CR and the terms of the lease that it'll be equivalent, and, you know, we could just, we could find somebody else to hold that portion of the CR. It's fine with us. I mean, that's preferable for us, as a matter of fact." So, he added, if the Town were willing to be the co-holder, it would be parceled out like the archaeological restrictions. "That's perfectly doable," he added.

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Ms. Ottens-Sargent said that it was her understanding that **part of a Conservation Restriction was a requirement for wildlife resource management**. "And I don't see that as an aspect of this CR," she remarked, "and I would go further and say that my understanding is that this version of the Remand Plan has not gone back to the State, back to MEPA, for the Draft Environmental Impact Report. And because 70 acres were added to the project, I haven't heard enough either from your wildlife experts, you know, what the habitat issues are with that property." She also wondered if the project would be required to obtain a Conservation Permit.

Mr. Ward answered: "With respect to the Conservation Restriction itself, the Conservation Restriction provides or permits resource management to take place within the restrictions." In the most simplistic terms, he pointed out, the restriction said, "The land's there. Don't touch it," along with a list of permitted uses, which often allowed for normal forestry maintenance.

As part of the Applicant's proposal for a Resource Management Plan for the entire property, which includes the CR, Mr. Ward went on, Mr. Lerner preferred that explicit listings of such things not be included in the CR since the actions to be taken might change from year to year, requiring amendment of the CR. This in turn would necessitate a trip back to the State House. So, Mr. Ward explained, the CR operated to define the prohibited and permitted uses of the property, while the Resource Management Plan was the part of the proposal that defined the care and management of the land and its habitats.

Responding to another question from Ms. Ottens-Sargent, Mr. Ward related that the **imperial moth habitat** would be protected by the Conservation Restriction. He continued, "As far as issues with a Conservation Permit, I don't think we have to get a Conservation Permit. Natural Heritage will review the proposal when we go back to MEPA. And the next, I think, part of your question was, when are we going to go back to MEPA. We will have to file a Notice of Project Change because of the addition of the land, and once, with this process we would file a Notice of Project Change, MEPA would review that Notice of Project Change..."

Mr. Abrams explained that the DEIR had undertaken a comprehensive Monitoring and Resource Management Program that included all the resources – groundwater, surface water, habitat that needed to be preserved, wildlife. In addition, they would be continuing their resource inventories. "That plan hasn't been refined to where we've got dates and numbers of visits, et cetera," he said. "That will come in the final permitting. The concepts overall are in the DEIR."

"As to whether we understand the 70 acres," Mr. Abrams continued, "ironically, we do." When they had done the studies of birds and vegetation, they had gone over into that land, he explained. "The reason we did that was because in following the U.S. Fish and Wildlife protocols, they don't want you to just look at the site that you're doing your work on. You should overlap on other sites."

Mr. Abrams elaborated that in looking at the Natural Heritage data, as they had begun to do several years before when the project first began, he understood how Natural Heritage had mapped that area into the same block of habitat, the Biomap being the latest product of that work. But as a matter of fact, he stressed, the data that the Biomap was based on was in their files long before the Biomap Program had been created, and those data had been requested by the Applicant's team. Moreover, the language of the DEIR included not only the 70 acres, but also the central Town Parcel – "We didn't ignore that either," he said.

Ms. Ottens-Sargent asked Mr. Abrams if the documentation had ever described to the Commission what made up those 70 acres. "Yes," answered Mr. Abrams, "when the Remand occurred, we were asked to look at our field data and our notes, and we have written a supplemental document that should be on record."

Ms. Ottens-Sargent suggested that it would have been helpful to have for the record a documentation of the State's initial response to the DEIR. "I think that's a legal procedural issue," said Mr. Abrams.

Chilmark Selectmen's Appointee Jane A. Greene wanted to know if the Applicant had thought about **extending the term of the campground lease to 99 years**, as had been suggested, and if the Applicant would offer that. "I think we would be amenable to a condition," replied Mr. Ward. Ms. Greene repeated part of her question: "Would you make an offer?" "You're killing me," joked Mr. Ward. Mr. Mone interjected, "The suggestion was made by the Oak Bluffs Selectmen on this matter, and I think they suggested that you consider it to be a condition. So it's really in your purview now." "What I'm asking is if the Applicant would come back and make that an offer," said Ms. Greene. "Yes," answered Mr. Mone.

Chairman Vercruysse returned to the subject of the **Applicant's lawsuit**. Part of the Plaintiff's argument, he said, was that the Commission did not have the right to condition or restrict pesticide use on the Applicant's land. Did the Applicant still feel that way, and if the Commission were to approve the project and make the restriction of pesticides a condition, would the Applicant accept that? he wondered.

"I think it's a legal matter," replied Mr. Ward. "I believe that the State preempts the field in pesticides. I think as a matter of obtaining an approval, we've offered to remove that as meaning the term 'chemical.' All pesticides are, organic as well. We would accept that condition and not appeal it and basically, the law as I understand it, if you accept the condition and don't appeal it, then even if the State preempts it, you're stuck."

"So you're offering that?" inquired Mr. Donaroma. "Yes," responded Mr. Ward.

Marcia Mulford Cini, a Commission member at large from Tisbury, wished to clarify something: "My understanding is the Applicant is not going to revise their Application in response to the Oak Bluffs, the three Selectmen's proposals or **would you consider**

**amending your Application...** Mr. Ward interrupted before Ms. Cini could finish. "I may not be allowed to answer that one," he joked, deferring to Mr. Mone. Mr. Mone stated, "I don't believe we'll be amending the Application."

Robert Zeltzer, a Commission member at large from Chilmark, observed that the Commission clearly considered benefits and detriments. He asked Mr. Mone **if the Applicant would consider changing some of the benefits offered if it would tip some Commission members in favor of the project.** Mr. Mone answered that if this were a perfect world, they would certainly entertain a new Application or an adjustment to the Application at this point – moving the holes, for instance – if it were deemed to be better for the project. But that was not an option available to them at this time, he stressed.

Mr. Mone elaborated: "We've agreed that in the future if there was some way of sitting down and working out an arrangement that people perceive to be better for this project, we'd be glad to sit down and work with you. In other words, our door is open. But we just want to make it very clear that the plan that we're presenting tonight is not going to be altered. We have to consider what's on the table at this point, and that's all we can consider."

Mr. Donaroma noted that he assumed that Messrs. Mone and Ward had talked with the owner of the property. He then posed this question: "If in a perfect world the Commission was to condition only that upon Approval the Applicant will work within the Town or with the Town and if the Town and the Town people vote and the titles are clear, is the Applicant serious about moving forward?"

Mr. Donaroma continued: "I mean, we're talking about a million two to start with, plus swapping land. Is the Applicant willing to say at this point that if it didn't tie up the thing, if it was just a condition – I'm thinking, if we give you the condition and the Town turns it down, it doesn't matter. You build it the way it is, okay? But if we give you the condition and we approve the Application and the Town says okay and the title's clear, then you're obligated to proceed and do it as a condition."

Mr. Mone hesitated to answer, and Mr. Donaroma added, "The Written Record will be open. It may be something for you to think about. I know that the title has to get cleared. But assume the title gets cleared, assuming the Town votes in favor of doing the swap, the affordable housing people come in line, then the dollar amount, I understand, is a wide-open thing, but – something for you to think about."

Mr. Mone responded: "I think you've hit upon a couple of things. When I was first asked about this, it was asked of me personally what I thought of the idea and then to take it forward from there, and I said, you know, this might be a very good option, this might be something that's very feasible. But we can't jeopardize the timeframe of this project, start all over again and go through five more Hearings and look at it coming back in next December, starting all over again."

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start all over again and go through five more Hearings and look at it coming back in next December, starting all over again."

Mr. Mone elaborated further on the length of the process thus far, then said, "I think it's not really at this point feasible to change what we're going to look at. Now, a two-tiered Approval - if you could structure it some way to have a two-tiered Approval, you can reach one level that would encompass what we present..." "That's exactly what I'm talking about," said Mr. Donaroma, before Mr. Mone could finish his sentence. Mr. Mone continued, "And then, just as I told the people who were discussing it with me, it's an if-if-if proposal after that. If this happens, if the Town says okay, if all these things come into, are actual results, where everything falls into place..." "I would need to know that the Applicant would be willing to do it at the end of that," stressed Mr. Donaroma. "You know, I can't answer for the Applicant at this point in time," said Mr. Mone.

**Ronald Mechur, another agent for the Applicant** came forward and stated the following: "I'll say a little, then get off the stage. I did speak to the Applicant, the owner, Mr. Kupersmith. If you move to a two-tiered proposal, if you call it that ... the owner would move with all deliberate speed to work with the Oak Bluffs community to make the wishes of the Board of Selectmen happen..." Mr. Mechur added that he had not looked at the numbers, "but we will do our best effort in very short order to make that plan happen."

Ms. Cini then stated: "It would be impossible for me to overstate the enormous damage that **CK Associates' 40B proposal** has done to the possibility that those of us who work to achieve affordable housing in a friendly, straightforward way have been able to proceed using that statute on Martha's Vineyard." The collateral damage created by the CK Associates Application had been enormous, she said. "I would like the Applicant to respond to that," she continued, "but I think it may be that you might want to refer it to Mr. [Brian] Lafferty, who happens to be here tonight. That's up to you." [See page 20 of the Full Commission Meeting Minutes of December 20, 2001 for background on Mr. Lafferty.]

Ms. Cini went on: "But I'm very angry about it, and it's made life very difficult for those of us who work awfully hard to make straightforward affordable housing happen here, and I think you need to hear that, and I think you need to be given the opportunity to respond to it."

"I'm not sure I can handle it," answered Mr. Mechur, referring to Ms. Cini's request. This had been a long, tiring experience for him, he went on, "and I'm sorry it's come to this." He thought, he said, that a lot of healing had to take place between friends and in the community as a whole. However, he continued, when he had first come before the Commission on April 6, 2000 and had given a 45-minute presentation, he had made comments and suggestions in that presentation about the possibility of the alternative manners of development.

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developments as "a barely veiled threat to return to the Commission with an intensive housing plan for the land if the golf club is not approved." So he had come before them a year and a half before telling them that there was a alternative plan, he emphasized, and every time they had come before the Commission, the Applicant's team had told the Commission the truth.

"And so I feel the same way that you do about this," Mr. Mechur went on. "I'm sorry we're in this position. My hope, quite frankly, is that we move the golf course procedure along. Perhaps we were at fault raising conflict issues that came out and that we weren't here waiting for Judge Kilborn next week, you know, next Tuesday. Mr. Rappaport and Mr. Wodlinger will be before Judge Kilborn, perhaps deciding whether the Vineyard Commission has jurisdiction over 40B. I wish we weren't there." He reiterated that the Chapter 40B proceeding was "really no surprise," and he stressed that Webb's Campground had been on the market 10 years earlier. "And for whatever reason," he said, "we nicked and dined it and we didn't buy it, and it opened up all the other land where the title wasn't clear."

Ms. Cini responded, "For clarification, Ron, I wasn't suggesting there was any subterfuge or surprise about it. I was just suggesting that the use of the statute has had some damage that you may not fully recognize." Mr. Zeltzer pointed out that any businessman going into any venture usually had some fallback positions - "He doesn't necessarily wave them around in here," he said, "unless he feels that puts pressure on somebody or something."

Mr. Mechur explained that the economic climate had changed during the prolonged process of the Application. For one thing, he said, a developer would make more money on houses than on golf courses. "But as we've turned the corner, in order to be successful realistically in the Remand process with you, there were doubts," he said, "and the economy has changed, and quite frankly, he makes more money on the 40B project. It never was about that, but now he has \$20 million of his family's money at stake." Mr. Kupersmith himself had maintained some distance from the process, he said, with Messrs. Mone and Putnam doing the lion's share of the work.

"It's up to us," Mr. Mechur concluded, "to try to build the best community-spirited, environmentally safe proposition we can do in the absence of a full conservation purchase." That opportunity had been missed, he said, adding, "In a strange way, we're all to blame." He hoped, he noted, that the Hearing would be closed that evening. "And the rest is up to you," Mr. Mechur concluded.

Mr. Donaroma wanted to know, "If the golf course is approved with conditions, the 40B Application goes away and the legal lawsuit is terminated?" Mr. Mechur replied that that process was already underway, with a court appearance set for the following week. It was possible, he said, for counsels to make a Joint Motion asking Judge Kilborn to hold the calendar and wait until a Decision had been made on the Remand Plan.



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Mr. Donaroma repeated his question: "If this golf course is approved with conditions, does the 40B Application go away? And if there's still a legal battle going on with 40B, does that get terminated? Are you offering that?" Mr. Mechur replied that he would be happy to discuss with Mr. Kupersmith at about 11 o'clock that night about moving along the Remand Plan Application process and getting Judge Kilborn to hold off the 40B proceedings.

A number of Commission members started to speak at once. Mr. Mechur tried to clarify what he had said. If Judge Kilborn were to hold off his ruling on the 40B matter and the Commission were to approve the Remand Plan with conditions, "the 40B plan goes away," he said. "The other part of the question is, will you drop the 40B Application?" asked Ms. Green. "The Application will disappear," answered Mr. Mechur. "You will withdraw it?" asked Ms. Greene. "It will be withdrawn," replied Mr. Mechur, adding that counsel for the Applicant would file a Motion For Dismissal concurrently with Commission Counsel Eric Wodlinger.

"And the Applicant is saying that if he gets his golf course, he's not going to do a 40B, [if he] gets his permit," said Mr. Donaroma, trying to confirm what Mr. Mechur had stated. "Even if it's a better investment?" asked an unidentified female Commission member. Mr. Mechur replied, "I still believe -- this is going to require a lot of homework from Bob, Herb and myself to go back to Mr. Kupersmith and say to him, 'We want you to do this.' It's not going to be that easy, okay? But I think those two gentlemen can be pretty persuasive."

Mr. Mechur then outlined how he would present this proposal to Mr. Kupersmith and ask him if in view of these developments he would stay the Chapter 40B process and that if there was a Decision that was appropriate for the Remand Plan, if he would then dismiss the case.

Next, Ms. Sibley spoke. "With all due respect," she said, "I don't think we should be making legal decisions without consulting with our counsel. I mean, I think I understand where Michael [Donaroma]'s going on this. The strategy issue, whether or not this body wants to postpone the judge's decision, is not something that should be made because Michael made a suggestion to Ron [Mechur] and Ron ... I mean, this is something this whole body ought to discuss."

Ms. Sibley continued: "I mean, it's nice to say, 'Jeez, maybe the judge is going to rule that we don't have purview. Wouldn't it be nice if he never ruled on that?' Well, you know, damn it, if we don't have purview, I'd just as soon know it. I don't want to play games with this. And so I don't in fact favor some sort of game where we postpone hearing the bad news, and I certainly don't favor making that kind of a decision without consulting with our counsel." "And with each other," said John Best, a Commission member at large from Tisbury. "And with each other," echoed Ms. Sibley.

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Mr. Best then offered the following: "I think as much as I'm sympathetic to the Applicant's not having the counsel of the owner, I think we as a board should understand that board members tonight don't have the counsel of the whole board. And we're getting into negotiations with Applicants by individuals on the board, and I think it's inappropriate. They're not necessarily bad ideas. They need more of an airing within the Commission."

Mr. Donaroma asked for a Point of Order. He related how the Commission had been through similar problems in years past when members had wished they had had the opportunity to talk to the Applicant during the Public Hearing process. He elaborated: "What happens is, the Public Hearing gets closed, and these wonderful, crazy ideas that we come up with don't get discussed. And if they do get discussed, then there's talk we have to reopen the Public Hearing. I think the public should be able to hear what we're discussing. They should hear our crazy condition ideas, and therefore they can still give written comment, the Applicant can give a written comment. I don't think we're hurting anything by shooting out ideas here."

Mr. Israel returned to the question he had asked earlier: If the golf course were to be approved, would that preclude Mr. Kupersmith from continuing with his Chapter 40B filing? [See page 18 of these Minutes.] Mr. Ward replied that his answer to that question was still the same. Mr. Israel observed that he did not see that Mr. Donaroma's idea would "change the dynamic of anything." Mr. Ward offered this observation: "I can't speak to any of the lawsuit aspects of the 40B, but I'm assuming that Corey [Kupersmith] would want to talk with his lawyer as you'd want to talk to yours. I mean, I can't advise about that, but I'm guessing what Corey'd want to do."

Mr. Woodruff asked Mr. Mechur to "give me the spin on, like, nine holes versus 18 holes." In other words, he said, **can one enjoy a good game of golf on nine holes?** Mr. Mechur responded that he thought one could and that two of the Island's courses were nine-hole ones. "Have we considered nine holes? No," he concluded.

Ms. Greene had a **question about employees at will being required to live at the dormitory facility**: "What happens if it's a local kid and he'd be required ...?" Before she could finish, Mr. Mone answered that if a person already had a house on the Vineyard, he would not have to live in the dormitory.

Ms. Greene requested that Mr. Mone **describe the physical aspects and the number of shelters that the Applicant planned to put around the golf course**, as referred to in testimony on November 15. [See page 17 of the Full Commission Meeting Minutes of November 15, 2001.] Mr. Mone replied that there would be either two or three lightning shelters with toilet facilities on the course. He had not seen any rendering of these by the clubhouse architect, he said, adding, "I've seen them where they're just outhouses."

Mr. Israel asked **if the on-site restaurant would be private**. Mr. Mone answered, "This will be a private restaurant for all the members, including the Island members, and their

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guests...." It would not be like the restaurant at the Farm Neck Golf Club, for instance, where a non-member could eat if a table was available, he added.

Mr. Israel inquired about **the number of employees the course would have in the summer**. "I'd say 40 to 50 employees," answered Mr. Mone. And did Mr. Mone think that this would have **any negative impact on the Island's labor force?** wondered Mr. Israel. Mr. Mone explained that although logically the club would be competing with other businesses for summer labor, golf tended to attract employees who normally would not be on the Island. Moreover, he said, the dormitories would provide a motivation for them to come to the Vineyard.

Mr. Mone added that a lot of people worked on courses in Florida during the winter and then came north in the summer. "Because we'd have housing, we'd attract more golf professionals or semiprofessionals, people that are experienced in the golf business, to fill those jobs," he said. Responding to another query from Mr. Israel, Mr. Mone explained that any empty beds would be offered to other business owners.

West Tisbury Selectmen's Appointee Kate Warner wanted to know **why the Applicant had not considered a links course**, which, to her understanding, would involve the cutting-down of a lot fewer trees. "This course is more of a links course than the previous course that was presented," responded Mr. Mone, who added, "Probably a true links course would clear - I've played links courses - would clear all the trees that were on the perimeter of the golf course. There'd be no borders between holes. There wouldn't be any corridors of trees at all."

Ms. Warner said that a friend had likened a links course to hitting a ball in a narrow alley of trees. "That's not what a links course is," replied Mr. Mone, who noted further that because of safety factors, having a links course would not really affect the distance between the holes. **Golf Operations Consultant Charles Passios** said that some designers leaned toward a links-style course in order to reduce turf surface; the Applicant had already achieved that, he said. Mr. Mone added that a links course would look more like the plains of Katama and that this type of course was usually found on flat land.

Ms. Warner referred to the fact that although the Applicant had offered the use of the course to the high school golf team, he **had not offered anything to the children of Martha's Vineyard, potential golfers who received very inexpensive instruction at Farm Neck, for example**. "The course intends to run youth clinics," replied Mr. Mone. "We'll have a number of golf professionals employed at the club that would run them on weekends, I'm sure. This club wants to be a good neighbor. I'm sure it would encourage children to come for a very nominal fee, similar to Farm Neck. We'd have some group lessons in a clinic environment."

Mr. Zeltzer prefaced his question by noting that a number of people had disagreed with the leaching rates presented by the Applicant's team and that the Applicant had presented very specific rates for leaching, specific quantities for chemical and water usage, and so

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forth. He then posed this query: **"If this were reduced to an Aquifer Protection Agreement between yourself and the Towns affected by it, I guess primarily Oak Bluffs and Tisbury, would you commit to such an agreement?"** Said agreement, he explained, would define limits which when reached would lead to the shutdown of operations.

Mr. Mone replied that he did not know how to answer that question specifically, but that he assumed that the Commission would be conditioning its Decision to provide for those types of events. Mr. Zeltzer emphasized that the agreement would be between Down Island Golf and the Towns, with the latter being entrusted with the enforcement of the conditions. "If I was a Commissioner, I would have the same concerns," said Mr. Mone. He would want to be assured, he added, that if there were problems, the course would be shut down by the Town.

Another member of the Applicant's team, **Charles Natale of Environmental Science Services**, pointed out that there was an Aquifer Protection Overlay District in place, "so there is a baseline of protection there already." In addition, he said, the Applicant's Natural Resources Management Plan included monitoring for all of the turf management materials that they expected to use, with protocols for testing and thresholds. And finally, he stressed, the Applicant's team would be working closely with Oak Bluffs Water District Supervisor Deacon Perotta.

Chairman Vercruysse wanted to know **if the Applicant would be willing to provide a wood bank for Island residents**, supplied by the trees that would be cut down for the course. "I think it could be done," replied Mr. Mone. "The answer is yes," said Mr. Ward.

The Chairman also asked if Mr. Mone could estimate how much wood would be available once the golf course's needs had been met, so that the Commission would write in an amount as a condition. "I don't think that woodchips are critical to the golf course," said Mr. Mone. "There'll be probably more wood available than there would be people to come pick it up. I think we have to put it also within a timeframe, that if it didn't get picked up in a certain period of time, then we'd have to chip it."

Ms. Ottens-Sargent prefaced her question by referring to the fact that Water Resources Planner William Wilcox had recommended that the Commission require more lysimeters than monitoring wells. Mr. Wilcox had also emphasized that a neutral party had to be doing the monitoring, she said, and the Town would probably not be in a position to do that type of monitoring. In addition, she referred to the Island Ponds Restoration Fund, confirming with Mr. Mone that the board administering that fund would not be doing the monitoring.

Ms. Ottens-Sargent then asked **if the Applicant had put together a very specific monitoring plan that would provide thresholds and so forth**. Mr. Natale answered yes. He then elaborated: "We have had numerous discussions with Bill Wilcox,

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particularly and more recently on a modified approach in the Remand Plan. Basically, there's a series of monitoring devices called lysimeters that would be installed within certain turf types on the course – tees, greens, fairways – representing the conditions that all manage differently, you know, fertilizer applications and [inaudible] practices.”

Mr. Natale continued: “And then we would monitor those, the greens would be lined, we would test effluent coming from underneath the greens. So there are several of those mechanisms already in place. In fact, you should have notes going into some detail on numbers, where they'd be located. And we have that pretty well advanced, and if the project were to be approved, we'd finalize that. But we're actually in very good shape there, and we agree with Bill's position, and we've done this cooperatively.”

Ms. Ottens-Sargent wanted to know more about the monitoring. Mr. Mone answered that Town of Oak Bluffs would hire an **independent monitor** at a cost of about \$5,000 per year, to be paid for by the Applicant.

Regarding the DEIR, Ms. Ottens-Sargent noted that MEPA had indicated four concerns with the initial Application. “Did you address those?” she wondered. Mr. Natale replied that “in general the MEPA comments on the Draft EIR were that they accepted it as being adequate and responsive, number one, to their scope. Number two, in terms of additional studies that they would like to see in a final EIR, which is yet to be produced, [they] talked about finding ways that perhaps look at rearrangements of holes or conditions on the course that would reduce the need to reduce managed turf in general or reduce the need to open up or remove more trees or to have wider fairways.”

Mr. Natale continued, “I think we've listened to that and accomplished that. We have reduced the managed turf area by some twenty-some odd acres, I believe, in total and that is significant. It went from an original of around 92 to, I believe, 68 at this point. And in addition, we now have a much more broader [sic] area with the additional land to spread the holes out to reduce that particular impact. So I think that MEPA would see the Remand Plan, I think that they would concur not only with the science but with the fact that it responded to the additional concerns that they had...”

“When you talk about how much of the property is not being impacted, that is **not managed turf, that is being left in a natural state, I'm assuming you're including those buffer areas ...**” said Ms. Ottens-Sargent. Mr. Natale answered yes.

Ms. Ottens-Sargent continued: “But when you bring in the biology and our concerns about biodiversity, which is what came up, what came out of the last Hearing regarding the ... Biomap and the core habitat issue, I can appreciate all that the you said about promoting diversity [inaudible], whether it's the pond you're creating or edge or whatever you call it, but I still have great concern for the interior birds specifically ... or any of the wildlife, including plants in the interior woodlands....”

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Ms. Ottens-Sargent emphasized that she was **not convinced that the Applicant was mitigating the impact the golf course would have on the wildlife in the interior woodlands or that the Applicant was at least balancing the detriment.** Mr. Natale deferred to Mr. Abrams, who began by stating, "I think that for one thing you didn't need the public's testimony to know – you only needed to read our report – to understand that we acknowledge that [with regard to] interior species, there'll be some loss. As to whether it's been balanced adequately, it's our opinion that the balance is more than adequate." He added that the statistical indices of biodiversity would increase on the site as a result of the project.

Mr. Abrams observed that the Commission faced a choice: Was that the kind of direction they wanted to see this land take as opposed to what alternatives there might be?

As to the Southern Woodlands' relationship to the State Forest, Mr. Abrams went on, "it is patently false that this habitat is unique compared to the State Forest, and in fact all you need to do is look at the Biomap documentation – not the stuff that was presented emotionally and hysterically – but rather the research material that's in their files that we have in our files. This property was not mapped for vertebrates, communities or vegetation. It was only mapped by the State because of the moth. And [inaudible] the Biomap includes two-thirds of all the available open space in the State ..."

Mr. Abrams continued: "And if you read the documents, as I quoted them myself earlier, the Biomap people who generated those products acknowledge the limitations of the Biomap and this evaluation of diversity. We look forward and we are committed to coming back and spending considerable time documenting the biodiversity statistically and then tracking, as the property is changed, what you get for it by the creation of the ponds, the large corridor that's now possible through the middle of the site, the reconfiguration of the course in the Remand Plan with the additional acres [that] are all specifically responsive to the concerns expressed by the State and in fact they are responsive to the concerns expressed by the public."

Mr. Abrams concluded: "Obviously, the problem is those people in the public expressing those concerns didn't want to hear that answer." "Sir, don't insult us!" shouted an unidentified member of the audience.

Ms. Ottens-Sargent referred to the fact that Natural Heritage was trying to promote the preservation of woodlands that could become old growth forest. "That in itself does make the Southern Woodlands quite different from the State Forest," she remarked, "because the State Forest is a plantation in areas."

Mr. Abrams responded that there were patches of the State Forest that had been planted and there were patches of the Southern Woodlands that had been planted. "I don't see a distinction between the two sections of land," he said. He provided some examples of the similarities of the two, and he reiterated his argument about Natural Heritage not having found vertebrates, communities or vegetation in the Southern Woodlands.

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Mr. Abrams then observed, "What we believe we've done is been responsive to the scientific data that's been presented. The philosophical question whether this could turn into a wonderful thing if left undeveloped, we can't answer that question, and it's not really relevant to an impact assessment for this project."

Ms. Ottens-Sargent also asked if the State had heard the Applicant's rationale that the impact of the project on the interior would be more than adequately balanced. Mr. Abrams replied that he assumed the State had read their documentation.

"Would you **accept a condition from the Commission to do a more thorough wildlife inventory?**" inquired Ms. Ottens-Sargent. "Well, we've already offered that," answered Mr. Abrams. "Whether you make it a condition or not, it's already on the record." Mr. Natale noted that in the Natural Resources Management Plan required by the DCPC, the Applicant had included annual monitoring to demonstrate species diversity and increases.

Ms. Greene wanted to know if the Applicant would **allow the property to be used for the Christmas Bird Count**. Mr. Abrams replied that he hoped that avian expert Vern Laux would continue to use the site to contribute to the count.

Mr. Israel wondered **if an increase in geese would be considered part of the site's biodiversity**. "If there were a reason to think we should promote geese on the golf course, then we wouldn't employ a dog to chase them," answered Mr. Abrams. Mr. Israel repeated his question. Mr. Abrams responded that in his report he had not put much weight on the increase in the Canada goose population. Mr. Natale pointed out that currently there was no surface water on the property. With the creation of surface water by the project, he said, would come species that utilized it, like amphibians and reptiles, that were not there now.

Mr. Israel asked if it was known what species would replace the ones that might possibly be diminished or disappear. Mr. Abrams noted that their documentation included a speculative list. Mr. Natale said, "It's in the report. There's a list of all the different types." Mr. Mone mentioned that the Farm Neck Golf Club had Gus Ben David of the Felix Neck Wildlife Sanctuary come many times during the year to help them with their wildlife program. "I'm sure we can do something similar to that," he said.

Chairman Vercruysse confirmed with Mr. Mone that this would be a **walking golf course**. Responding to a question from the Chairman, Mr. Mone explained that carts would be provided for medical reasons. "Not old age?" asked Chairman Vercruysse. "That could be a medical reason," replied Mr. Mone, who added, "I'm assuming we'd be reasonable with a request to use a cart."

Chairman Vercruysse then said that he would like to see electric carts with solar-powered charging stations for the carts that were used, if it was feasible. "I think it could be something possible in the future," answered Mr. Mone. The Chairman also wanted to

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know about how many carts there would be. Mr. Mechur and Mr. Mone replied that there would be 24.

Mr. Woodruff inquired if there was detailed documentation on **how the Applicant would manage the vegetation around the ponds that would be created**. "Yes, it's in the report," replied Mr. Natale, who added that it had been included in the Natural Resources Management Plan and the Turf Management Plan.

Turning back to the **Island Ponds Restoration Fund**, Ms. Ottens-Sargent wished to confirm that the \$75,000 a year earmarked to support the fund would be separate from the monies being used to support the septic upgrades at the Island Elderly Housing complex. She also wanted to know if the annual funding would be offered in perpetuity. "We've stated it's for five years," responded Mr. Mone. "And would you be willing to extend that?" asked Ms. Ottens-Sargent. Mr. Mone said that he did not know.

Regarding turf management and fertilization, Mr. Woodruff noted that the **products list seemed to be favoring an inorganic approach**. Yet the Applicant had described an organically drive approach to turf management. Which was it? wondered Mr. Woodruff. Mr. Passios explained that their approach included some inorganics applied through the irrigation system in minute amounts. There were no organic materials currently available, he said, that could be distributed through an irrigation system in liquid form.

Mr. Woodruff asked Mr. Passios if he could put a percentage on the portion of inorganic to organic fertilizers. Mr. Passios said he could not answer that without the list in front of him. He added that the emphasis would be on soil management and that after the grow-in period not much fertilization would be required. He also pointed out that nitrates were nitrates and that the leaching rate was more important to consider than whether or not the fertilizers were organic.

Mr. Woodruff confirmed with Mr. Passios that the **pesticides used on the course would be strictly organic**. He then observed that he thought there was a direct relationship between soil health and disease suppression and that organic fertilizers were more supportive of the soil biology.

In addition, Mr. Woodruff wanted to know what the Applicant had meant by humates. "Humates are natural carbon deposits," replied Mr. Passios. In some cases, he said, compressed peat was turned into a carbon source. "So you're not talking about compost then?" wondered Mr. Woodruff. Mr. Passios responded that if he could find a source of good compost, he would use that. Mr. Woodruff requested a list of the sources for the humates. Mr. Passios said that he could do that but that the list changed constantly depending upon conditions.

Mr. Toole referred to Selectmen Todd Rebello's suggestion for an **increase in the number of Island memberships**. [See page 8 of the Full Commission Meeting Minutes



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of December 20, 2001.] "Is that a possibility?" he wanted to know. Mr. Mone answered that it was "really up to you people to weigh that."

Mr. Toole also asked about the **environmental impairment insurance policy** and if the Applicant had submitted the materials requested in an earlier Hearing session. Mr. Mone referred to a letter that he was submitting for the record that evening from the same insurer that handled Ralph Packer's environmental policy. *[See the meeting file for a copy.]* Said letter indicated that they could, in fact, provide \$10 million of herbicides and pesticides coverage that included nitrogen impacts. As far as the premium was concerned, Mr. Mone did not consider this an issue; it was simply a problem of the person who was buying it. He added that the premiums for such insurance had become more affordable since the incidence of pollution was "close to nil."

"Where is the **location of the wastewater discharge** going to be?" inquired Mr. Toole. Mr. Natale said that the leaching field would be adjacent to the wastewater treatment facility. Mr. Toole asked if this answered the questions that Water Resources Planner William Wilcox had posed in an earlier session. Mr. Wilcox said that it did, although he still had **questions about the nitrogen loading calculations for the Martha's Vineyard Arena**. Mr. Natale responded that he could work with Mr. Wilcox on those numbers.

Mr. Israel wondered if the Applicant still intended to follow up on Selectmen Michael Dutton's request that the course **handle some of the Town's tertiary treated wastewater**. *[See page 6 of these Minutes.]* Mr. Mone replied that if they could, of course they would.

Mr. Woodruff had more questions about **disease suppression for the turf**. First of all, how many examples were there of golf courses in the United States that used strictly organic pesticides? he inquired. "Five that I'm aware of," answered Mr. Passios. And for how long had they been in existence? asked Mr. Woodruff. There was a course on Long Island that was strictly organic that had been in operation for approximately seven years, responded Mr. Passios. "The others are newcomers," he noted.

**If the situation arose that the groundskeepers were struggling to manage disease on the course for whatever reason**, wondered Mr. Woodruff, what did the Applicant plan to do? Re-turfing would be the solution, said Ms. Passios. So you have no plans to come back to ask the Commission for changes in the Turf Management Plan? asked Mr. Woodruff. Mr. Passios replied the he could not tell, that he did not have an answer for that.

Ms. Ottens-Sargent requested that Mr. Wilcox articulate his concept of a **performance bond for the project**. Mr. Wilcox explained, "I saw it as a lump of money that would be released, I think, on an annual basis, and the release would be determined based on the golf course meeting our requirements for nitrogen or water table level or the pond water quality sample." He pointed out that the only way to make a Monitoring Program have a

positive effect would be to have some money that would only be released when things were moving forward the way they were supposed to.

Asked by Ms. Greene if he was talking about a bond for the start-up period, Mr. Wilcox answered that he recommended the bond be in place for five years or until the parties responsible for monitoring were satisfied that the Monitoring Plan was working. Ms. Ottens-Sargent wanted to know if he had a specific amount in mind. "I think it should be a substantial amount of money that's in an escrow account of some sort," Mr. Wilcox replied.

Mr. Israel inquired whether or not the Applicant had any **contingency plans in the case of a drought**. Especially during the initial start-up period, interjected Ms. Ottens-Sargent. Mr. Natale responded that they had discussed with Mr. Wilcox a contingency plan for start-up-grow-in-phase irrigation and the controls they would use if there were drought conditions. This would consist of monitoring nearby wells, he explained, including using the benchmark well at the State Forest for setting pre-pumping indices. Thus, he said, they would be able to measure changes in the groundwater level and do the necessary curtailment.

Mr. Natale summed up: "Basically what it involves is a cooperative, informed management scheme with Martha's Vineyard Commission Staff, with Bill [Wilcox] monitoring his wells on a periodic basis..." This was all outlined on the record, Mr. Natale added.

But what would you do in the event of a drought? repeated Mr. Israel. The course could stop pumping, Mr. Natale replied, and they could draw water from their storage ponds. The time was 9:50 p.m.

#### **Applicant's Summary.**

Mr. Mone related that he and Mr. Putnam had been involved in golf course projects for the last three years, beginning with the Meeting House Golf Club Application. Following that Denial, they had been asked to work for the Martha's Vineyard Golf Partners group, but had declined, figuring that that project would be turned down as well. After sitting on the sidelines for a couple of months, Mr. Mone continued, they had been approached by Corey Kupersmith and asked to develop a community benefits package for the Down Island Golf Club project.

Mr. Mone emphasized that the Down Island Golf Club Application had exceeded all the criteria set up during the Martha's Vineyard Golf Partners project process; nonetheless, it had been denied in the summer of 2000 by a vote of seven to five. The Applicant brought suit against the Commission, he recounted, and then on the advice of counsel went through a mediation process with a committee from the Commission. That process, he said, had produced the consensus that the Applicant's team needed to go into the community to get input, using that to formulate an approvable plan.

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Mr. Mone continued that he and Mr. Putnam had met with public officials, conservation groups and people for and against the project. It had become clear, he said, that there were only three options for the Down Island Golf Club site: conservation, a golf course or a housing development. The conservation option was explored and found not to be feasible, he noted. He and Mr. Putnam did not support the housing option, he stressed, and they considered the development of a golf course as "a solution where everyone wins."

Mr. Mone then listed many of the improvements contained in the plan. These included: more than 100 acres of protected forestland; no single-family houses; \$200,000 in annual taxes to the Town of Oak Bluffs; \$150,000 of financial assistance to the Martha's Vineyard Arena in exchange for an easement; a 30-site public campground; intact Ancient Ways; year-round public access to all trails; a new trail and public viewing area near Lagoon Pond; public trailhead parking; a nitrogen mitigation plan to reduce nitrogen loading to the Lagoon and Sengekontacket Pond; creation of and funding for an Island Ponds Restoration Committee; funding for upgrading of septic systems at the Island Elderly Housing complex, with funds available to upgrade the systems of single-family houses around the Lagoon; a \$10 million environmental impairment insurance policy; an organic golf course; liners for all tees and greens with comprehensive water testing and monitoring; native plants and grasses; a Conservation Restriction; an Archaeological Preservation Restriction; access to the Town Parcel; one acre contributed to Island Elderly Housing for additional units; a 50-bed dormitory for employees; 150 Island memberships which could be used seven days a week after two o'clock and would allow for guests; greens fees from the Island members going to the Town of Oak Bluffs; a caddie scholarship fund; and charitable tournaments.

Mr. Mone then listed and quoted from letters of support from public officials and boards: the Oak Bluff Water District Commission; the Oak Bluffs Trails and Byways Committee; the Oak Bluffs Finance Committee; four of the five Oak Bluffs Selectmen; the Martha's Vineyard Regional Housing Authority; and the Wampanoag Tribe of Gay Head (Aquinnah).

Mr. Mone concluded by saying that more than 2,000 pages of documents had been provided by the Down Island Golf Club Applicant and that this project had received more scrutiny than any other. In addition, he emphasized, MVC Staff concurred with the science presented by the Applicant's team.

The Hearing Officer closed the Public Hearing at 9:59 p.m. and left the Public Record open until 5:00 p.m. on Thursday, January 10, 2002.

**Vote: County Sheriff's Dept. Corrections Center Written Decision (DRI #547).**

On a Motion by Ms. Greene, duly seconded, the Commission approved by voice vote the Written Decision for the County Sheriff's Department Community Corrections Center

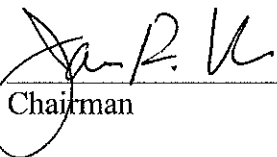
*Martha's Vineyard Commission  
Special Meeting of January 3, 2002: Page 36*

(DRI #547). *[See the meeting file for a copy of the Decision.]* Those members eligible to vote were: J. Athearn; J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel; J.P. Kelley; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; A. Woodruff; and R. Zeltzer.

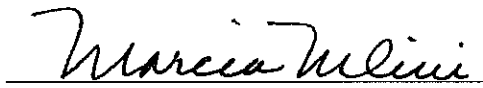
**Welcome to a New Member.**

James Athearn, a Commission member at large from Edgartown, formally welcomed to the Commission the new County Commission representative, Roger Wey.

The Special Meeting adjourned at 10:03 p.m.

  
Chairman

April 24, 2002  
Date

  
Clerk-Treasurer

May 23, 2002  
Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene;  
T. Israel; J.P. Kelley; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk;  
L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff;  
and R. Zeltzer.

ABSENT: A. Bilzerian; E.P. Horne; and R.L. Taylor.

*[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Special Meeting.]*

***Summary of Revisions to the  
Meeting Minutes of January 3, 2002  
Proposed by the Commission Members  
in the Meeting of February 7, 2002***

*[An excerpt from the Meeting Minutes of February 7, 2002 follows immediately. It describes the revisions requested by the Commission members with regard to the Meeting Minutes of January 3, 2002.]*

***Page Para. Sent. Proposed Revision***

23	4	1	Delete the word "understate" and replace it with "overstate."
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